

Remarks

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the reasons that follow.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented with appropriately defined status identifiers.

Claims 1, 23, 26, 37, 48, 52 and 53 have been amended, and claim 51 has been canceled. Upon entry of this Amendment, claims 1-50 and 52-60 will remain pending in this application.

Support for the amendments to claims 1, 26 and 53 can be found, e.g., in original claim 51. The other amendments to claim 53 are made to provide further clarity. The amendments to claims 23 and 48 are merely grammatical in nature. The amendment to claim 37 corrects the claim number from which claim 37 depends, and the amendment to claim 52 follows from the cancellation of claim 51. Because the foregoing amendments do not introduce new matter, entry thereof by the PTO is respectfully requested.

Status of the claims

On page 2 of the Action, the PTO states that claims 3-13, 15, 16, 25-52, 55, 56 and 58-60 are withdrawn as being drawn to a non-elected invention and species. Applicants respectfully submit that both claims 5 and 25 should also be under consideration. Claim 5 recites that the hydration inhibitor is selected from, among other things, “polymeric materials”. Further, claim 25 is generic to the elected species ABT-578, phosphoryl choline, and stent.

Consideration of references cited in information disclosure statement (IDS)

On the returned copy of the IDS filed on October 21, 2005, the PTO crossed out references C8, C9 and C10 on the ground that no copy of any of these three references has been submitted. Accompanying this Reply are a supplemental IDS citing each of these three references and a copy of each of these references. Applicants respectfully request that the PTO

return a signed-off copy of the supplemental IDS acknowledging that the PTO has considered each of these three references.

Claim rejection under 35 U.S.C. § 102

On page 2 of the Action, claims 1, 2, 14, 17-24, 53, 54 and 57 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by US 6,872,225 to Rowan *et al.* (“Rowan”). Applicants respectfully disagree with this rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. An “inherent characteristic [must] necessarily flow[] from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (original emphasis). “Inherency ... may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991) (quoting *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)) (original emphasis).

Applicants respectfully submit that Rowan cannot anticipate any of the claims under consideration because Rowan does not expressly or inherently describe each and every feature of any of these claims. For example, Rowan does not expressly or inherently describe “an effective amount of a hydration inhibitor associated with [a] beneficial agent to control delivery [or ‘to enhance the stability’] of the beneficial agent from [an] interventional component, ... wherein the effective amount of the hydration inhibitor is an amount sufficient to shift the liquid-solid contact angle of the beneficial agent in association with the hydration inhibitor to at least 50 degrees.” These features are recited, directly or indirectly, in each of claims 1-25 and claims 53-60, respectively.

Because Rowan does not expressly or inherently describe each and every feature of any of the claims under consideration, Rowan cannot anticipate any of these claims. Accordingly, Applicants respectfully request withdrawal of the anticipation rejection over Rowan.

Conclusion

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The PTO is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 07-1850. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 07-1850. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 07-1850.

Respectfully submitted,

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